

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:

NAGPUR BENCH: NAGPUR

CRIMINAL REVISION APPLICATION NO.26 OF 2006

APPLICANT:

Madhukar s/o Deorao Dudhe, aged about 52 years,
occupation : Proprietor Nagesh Krishi Sewa Kendra
Old Cotton Market, Road, Amravati, tahsil and district :
Amravati

versus

RESPONDENTS:

- 1] The State of Maharashtra.
- 2] Abhijit Manoharrao Mendse, aged about 27 years,
occupation: business, resident of Sabanpura, Amravati,
Tahsil and District : Amravati.

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Shri Anil Mardikar, Advocate for the applicant .

Shri Thakre, A. P. P. for – State

Shri N. S. Bhagwat, advocate for respondent

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CORAM: S. R. DONGAONKAR, J.

DATE: 4/10/2006

ORDER

Heard counsel for the parties.

Rule. Rule made returnable forthwith

Heard finally at the admission stage.

- 1] The revision applicant – Madhukar seeks to challenge the order of 2nd Ad-hoc Additional Sessions Judge, Amravati in Criminal Revision no.66/2003 dated 3.1.2006 by which he allowed the revision petition preferred by the respondent no.2 – Abhijit –

original complainant for seeking enhancement in the sentence passed against the revision – applicant, in summary case No. 120/1999 by order dated 6.2.2003 by which the Chief Judicial Magistrate, Amravati convicted the appellant for the offence under section 138 of Negotiable Instruments Act.

2] Facts leading to this revision petition which are necessary for the disposal of this revision petition may be stated thus. The applicant was prosecuted upon the complaint of respondent no.2 for the offence punishable under section 138 of the Negotiable Instruments Act in Criminal Case No.120/1999 before the Chief Judicial Magistrate, Amravati. The complaint case was in respect of two cheques. After trial, the learned Trial Judge, found the accused – revision applicant guilty for the said offence and sentenced him to suffer S. I. till rising of the court and to pay fine of Rs.5000/-, besides ordering direction of payment of compensation of Rs.4000/-.

3] The complainant/respondent then preferred Criminal Revision Application No.66/2003 before the Additional Sessions Judge, Amravati seeking enhancement in the sentence as well as in the compensation amount. The said Criminal Revision was disposed of by the learned 2nd Ad-hoc Additional Sessions Judge, Amravati by his order dated 3.1.2006 by which he allowed that revision – petition and set aside the order of sentence in the said criminal case and remanded the matter back to Chief Judicial Magistrate, Amravati for hearing on the point of sentence and for passing appropriate orders of sentence.

4] This order is challenged by the revision applicant in the present revision petition under section 401 read with section 397 of Criminal Procedure Code.

5] In order to appreciate, the contentions of the learned counsel for the revision applicant it is necessary to note the reason appended to his order by the learned Ad-hoc Sessions Judge. According to him, as the revision applicant – accused did not prefer any appeal against the conviction, the consideration as to whether the conviction was legal or not, would not fall for consideration. As regards the sentence, he found that the sentence was too much lenient and there was no ground mentioned by the learned Chief Judicial Magistrate to award such lenient punishment. With these two grounds and considering the relevant authorities, he passed the impugned order.

6] Learned counsel for the revision applicant, has submitted that the impugned order is incorrect, unjust and improper at law as the point of limitation was not considered by the learned Additional Sessions Judge; though the revision applicant had raised objection by his objection pursis dated 20.6.2005 contending that the revision application preferred by the complainant was barred by limitation. Further according to him, there was an application by the counsel for the revision – petitioner to treat the said revision petition as an appeal under section 374 of Criminal Procedure Code vide application dated 21.2.2005 and as both these aspects were not considered, the learned Additional Sessions Judge's order is bad in law and therefore, it is liable to be set aside.

7] As against this learned counsel for the respondent no.2 has submitted that the objection as regards the revision petition being not within the limitation period, is bad in law and it was rightly not considered by the learned Sessions Judge. Further the accused i.e. revision – petitioner in the present revision, had not preferred any appeal against the conviction as such he could not have been heard on the said point and therefore, the Additional Sessions Judge rightly did not consider the application for converting the revision application into appeal and therefore, the impugned order of the learned Additional Sessions Judge is correct, proper and just at law and it calls for no interference by this court, as the impugned order is not perverse to the record.

8] It is necessary to mention that in support of his contention, learned counsel for the revision applicant has relied on the judgment of Patna High Court in AIR 1961 PATNA 252 [V 48 C 65] Md. Bashir Ahmad ..vs.. The State and Judgment of this Court in 2004(2) Mh.L.J. 753 [Suresh ..vs..Shantikumar]. Learned counsel for the respondent no.2 has relied on the judgments of this court in 2006(1) Mh.L.J. (Criminal) 1109 [Yusuf Ali Kayyum Ali Musalman ..vs.. State of Maharashtra] and Judgment of Apex Court in AIR 2002 SC 681 [Suganthi ..vs.. Jagdeeshan].

9] In these circumstances, the only point which needs to be considered is as to whether the order of the learned Additional Sessions Judge is incorrect, improper and unjust at law.

10] In order to assess the legality, correctness and justness

of the impugned order, it is necessary to peruse the objection raised by the accused to contend that the said revision application was not filed within limitation. According to him vide his objection the judgment and order of the trial court was passed on 6.2.2003. The complainant filed the said revision petition on 26.5.2003 which shows that it was filed after the expiry of 90 days. Further he has stated in his objection as to how much was the period for receipt of certified copy. After exclusion of the said period, the accused had submitted that the said revision application was not within the period of limitation.

11] On perusal of the order of the learned Additional Sessions Judge, it does not appear that he has considered the said aspect of the matter. He does not seem to have come to the conclusion that the said revision application was filed within a period of limitation or that the delay in filing the said revision application for any reason needs to be condoned. It is obvious that if there is no sufficient reason to condone the delay and the revision application is filed after the period of limitation, it could not have been considered. As the learned Additional Sessions Judge has not decided this point, the order passed by him ignoring the aspect of limitation would not be correct and proper at law.

12] As regards the prayer of the revision petitioner, wherein that the application for converting the revision petition into the petition of appeal under section 374 Criminal Procedure Code, although ex-facie can not be given much weightage, still that aspect should have been decided by the learned Additional

Sessions Judge. It is pertinent to note that in the present case accused had not preferred any appeal against the judgment and order passed by the learned Chief Judicial Magistrate.

13] Provisions of section 374 of Criminal Procedure Code are relating to the appeals by the persons convicted on trial. It does not envisage any appeal, by the complainant for enhancement of the sentence. However, still the learned Additional Sessions Judge, should have applied the mind and should have decided this point on merits.

14] It is therefore evident that when the objection and the application were on record, it was obligatory on the part of the learned Additional Sessions Judge to give findings and decide these aspects and then should have proceeded to decide the criminal revision application on merits. As this is not done by him, the order passed by him is not sustainable at law as correct, proper and just. Learned counsel for the applicant has relied on the judgment of this court in 2004(2) Mh.L.J. 753 – Suresh Fulchand Bumb ..vs.. Shantikumar K. Damani and the judgment of Patna High Court in AIR 1961 Patna 252 Md. Bashir Ahmad ..vs.. State. It is obvious that on perusal of these judgments, the facts in those cases were quite different than this case. Those were not the cases of non decisions on the material points in the case.

15] In this case the material point remained to be decided before the learned Additional Sessions Judge to decide the revision application on merit. In 2004(2) Mh.L.J.753 – Suresh Fulchand Bumb ..vs.. Shantikumar K. Damani, the order passed by

the Judicial Magistrate First Class was set aside and the matter was sent back to the trial court for passing well deserved sentence. The contention in that case was the sentence was inadequate.

16] In the case of Md. Bashir Ahmad, accused was convicted by the Magistrate and in appeal, appellate court was convinced with the convictions were good and the matter was remanded back with direction to the Magistrate for rewriting of judgment on the same evidence. The appellate court's order was held to be bad in law.

17] The learned counsel for the respondent as state stated above relied on two authorities referred above. Yusuf's case is on the point of the exercise of the revisional jurisdiction of the courts Suganthi's case is on the point of adequacy of sentence in certain circumstances. In the present case, the question of the extent of powers of the revisional court is not in issue.

18] The question is as to what is the effect of the order of the revisional court, which is passed without taking into consideration and deciding the objection on the ground of limitation. As it goes to the root of the very exercise of the revisional jurisdiction, in my opinion, that aspect should have been decided by the learned Additional Sessions Judge first and then he should have decided the matter on merits. In these circumstances the impugned order of the learned Additional Sessions Judge does not sustain at law as not being legal, proper and just. therefore, it is liable to be set aside. Accordingly order of

2nd Ad-hoc Additional Sessions Judge, Amravati in Criminal Revision no.66/2003 dated 3.1.2006 is hereby set aside. Matter is remanded back to him with a direction to hear the parties on the point of limitation and then decide the matter afresh. It is made clear that if he comes to the conclusion that the revision application is maintainable being within limitation or by condoning the delay, he may pass the judgment what he has already passed. With these observations, this revision application stands allowed to the above extent. Learned Additional Sessions Judge is further directed to dispose of this matter as expeditiously as possible in any case within a period of three months from the receipt of the record and proceedings. record and proceedings be sent to lower court immediately.

JUDGE

smp.